

FILED

JUL 27 2006

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

DANIEL G. PERKINS,

Petitioner - Appellant,

v.

DOUG WADDINGTON,

Respondent - Appellee.

No. 05-35869

D.C. No. CV-05-05247-FDB

MEMORANDUM^{*}

Appeal from the United States District Court
for the Western District of Washington
Franklin D. Burgess, District Judge, Presiding

Submitted July 24, 2006^{**}

Before: ALARCÓN, HAWKINS and THOMAS, Circuit Judges.

Washington state prisoner Daniel G. Perkins appeals pro se from the district court's judgment dismissing as untimely his 28 U.S.C. § 2254 petition challenging his transfer to Colorado pursuant to an interstate compact. We have jurisdiction

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

pursuant to 28 U.S.C. § 2253. We review de novo the district court's denial of a habeas corpus petition for failure to comply with the one-year statute of limitations established in the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), *see Laws v. Lamarque*, 351 F.3d 919, 922 (9th Cir. 2003), and affirm.

The district court properly raised the issue of whether Perkins' § 2254 petition was time-barred under the AEDPA statute of limitations. *See Day v. McDonough*, 126 S. Ct. 1675, 1684 (2006) (holding that district courts may consider, sua sponte, the timeliness of a state prisoner's habeas petition if the court: (1) accords the parties fair notice and an opportunity to present their positions; and (2) assures itself that the petitioner is not significantly prejudiced by the delayed focus on the limitation issue).

Because Perkins is not entitled to tolling between for the time period between his first and second rounds of state petitions, the district court properly dismissed the petition as untimely. *See King v. Roe*, 340 F.3d 821, 823 (9th Cir. 2003) (holding that the time between successive rounds of state petitions is only tolled if the second petition was made to remediate deficiencies in the previous properly filed petition).

AFFIRMED.